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5317 State Management Plan

STATE OF WEST VIRGINIA
STATE MANAGEMENT PLAN
FOR
SECTION 5317

FEDERAL TRANSIT ADMINISTRATION (FTA)
NEW FREEDOM PROGRAM

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WV Department of Transportation
Division of Public Transit
1900 Kanawha Boulevard East, Building 5
Charleston, WV 25305
304/558-0428
304/558-0174 (FAX)

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A. PROGRAM GOALS AND BACKGROUND

Introduction

The New Freedom Program is a new program authorized in the Safe, Accountable, Flexible, Efficient Transportation Act, a Legacy for Users (SAFETEA-LU) (P. L. 109-059), enacted on August 10, 2005. New Freedom grew out of the New Freedom Initiative introduced by the Administration under Executive Order 13217, "Community-Based Alternatives for Individuals with Disabilities. This Executive Order and subsequent program recognize that individuals who are transportation-disadvantaged face different challenges in accessing services depending on whether they live in urban, rural, or suburban areas. The geographic distribution of the transportation disadvantaged also create challenges for programs hoping to deliver transportation for their passengers. New Freedom assists with meeting these challenges by providing funds for new public transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act of 1990 (ADA) that assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services. SAFETEA-LU requires that projects funded from New Freedom programs be derived from a locally developed, coordinated public transit-human service transportation plan (coordinated plan) and be competitively selected.

West Virginia annually receives federal funds for New Freedom to distribute on a federal and local matching basis. The Governor of West Virginia has designated the West Virginia Department of Transportation (WVDOT/DPT), Division of Public Transit as the agency responsible for administering West Virginia's New Freedom allocation.

WVDOT, Division of Public Transit (DPT) solicits New Freedom applications, provides technical assistance to prospective applicants, selects projects, executes grant awards, and monitors equipment purchases and vehicle operation.

This State Management Plan meets the requirements of FTA as set for the in the New Freedom Circular issued May 2007, and describes the process by which the DPT implements the New Freedom Program within the State of West Virginia. This Plan also contains the criteria by which applicants can apply and receive New Freedom funding. To participate in the New Freedom program, an applicant must submit an application that meets the criteria listed in this plan and the instructions and forms contained in the WVDOT/DPT Application for New Freedom Funding application package.

Program Goals

The New Freedom program is a formula grant program intended to provide additional tools to overcome existing barriers facing Americans with disabilities seeking integration into the work force and full participation in society. Lack of adequate transportation is a primary barrier to work for individuals with disabilities. **The New Freedom seeks to remove this barrier by expanding transportation mobility options for individuals with disabilities beyond the requirements of the Americans with Disabilities Act of**

1990. Funds are available for all areas—small urban, and rural; projects must be derived from a locally developed coordinated public transit-human services transportation plan.

Definitions

The following definitions are provided as they relate to the FTA's implementation of the New Freedom Program:

Accessible Taxi: An accessible taxi is a vehicle that is used by a private provider of on-demand transportation service to the public that is regulated and licensed for such use by the municipality, county or other government entity. An accessible taxi is one which has the capacity to accommodate a passenger who uses a "common wheelchair" as defined under 49 CFR 37.3, at a minimum, while remaining in his/her personal mobility device inside the vehicle, and meets the same requirements for lifts, ramps, and securement systems specified in 49 CFR part 38, subpart B.

Americans with Disabilities Act (ADA): Public Law 336 of the 101st Congress, enacted July 26, 1990. The ADA prohibits discrimination and ensures opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation.

Competitive Selection Process: A process to choose which projects will be funded based on standard evaluation criteria applied to each project. Projects are not guaranteed funding year to year. As the Designated Recipient of FTA funds, the process is conducted by WVDOT/DPT for small urban and nonurbanized areas in the State of West Virginia. The projects selected must be derived from a Locally Developed, Coordinated Public Transit-Human Services Transportation Plan.

DPT: The division within the West Virginia Department of Transportation charged with carrying out the day-to-day administration of the New Freedom Program as designated by the governor.

Demand Responsive Service: Service which operates in response to calls from passengers to the transit operator. Vehicles are dispatched to pick up passengers and transport them to their destinations. The vehicles do not operate over a fixed route or on a fixed schedule. Routes change every day depending on the demand.

Designated Recipient: In nonurbanized areas and urbanized areas with a population of less than 200,000, the recipient is the State agency designated by the Governor to receive and apportion amounts under New Freedom. In the State of West Virginia, the WVDOT/DPT is the designated recipient.

Eligible Subrecipients: For purposes of the WVDOT New Freedom Program, eligible subrecipients can be any local governmental authority, non-profit organization, or operator of public transportation services that receives a grant under the New Freedom program indirectly through a recipient.

Fixed Route Service: Designated public transportation service in which a vehicle is operated along a prescribed route according to a fixed schedule.

Grantee: An eligible subrecipient, which submitted, and received approval of, a New Freedom application to the WVDOT/DPT.

Human Service Transportation: Transportation services provided by or on behalf of a human service agency to provide access to agency services and/or to meet the basic, day-to-day mobility needs of transportation-disadvantaged populations, especially individuals with disabilities, older adults, and people with low incomes.

Individual With a Disability: The term 'individual with a disability' means an individual who, because of illness, injury, age, congenital malfunction, or other incapacity or temporary or permanent disability (including an individual who is a wheelchair user or has semi-ambulatory capability), cannot use effectively, without special facilities, planning, or design, public transportation service or a public transportation facility. 49 U.S.C. 5302(a)(5).

Locally Developed, Coordinated Public Transit-Human Services Transportation Plan: A locally developed plan that identifies the transportation needs of individuals with disabilities, older adults, and people with low incomes, provides strategies for meeting those local needs, and prioritizes transportation services for funding and implementation. The plan must include an area no smaller than a county. **All New Freedom projects must be derived from these locally developed plans (Coordinated Plans).**

Mobility Management: Eligible capital expenses consisting of short-range planning and management activities and projects for improving coordination among public transportation and other transportation-service providers carried out by a grantee through an agreement entered into with a person, including a government entity, under Chapter 53 (other than Section 5309). Mobility management does not include operating public transportation services.

Non-profit Organization: A corporation or association determined by the Secretary of the Treasury to be an organization described by 26 U.S.C. 501(c) that is exempt from taxation under 26 U.S.C. 501(a) or one that has been determined under State law to be non-profit and for which the designated State agency has received documentation certifying the status of the non-profit organization.

Nonurbanized Areas: A rural area with a population density of less than 500 people per square mile or small urban area with a population of less than 50,000 people.

Paratransit: Comparable transportation service required by the ADA for individuals with disabilities who are unable to use fixed route transportation systems.

Pass-Thru Recipient: An entity participating in a New Freedom project that would receive New Freedom funds from an eligible subrecipient, which would be responsible for ensuring that the pass-thru recipient complied with all State and Federal requirements required under the New Freedom Program.

Program of Projects: A list of projects to be funded in a grant application submitted to FTA by a designated recipient. The program of projects lists the subrecipients and indicates whether they are private non-profit agencies, public bodies, or private providers of transportation service, and designates the areas served (including rural counties). In addition, the program of projects includes a brief description of the projects, total project cost, and Federal share for each project, and the amount of funds used for program administration from the 10% allowed.

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU): The federal transportation authorization bill that was signed into law in August 2005.

Section 5316 or JARC: The Job Access and Reverse Commute Program as described in SAFETEA-LU.

Small Urbanized Areas: An area with a population between 50,000 and 200,000.

State Transportation Improvement Program (STIP): A statewide document that includes all projects to be implemented within a four year period in an urbanized area with a population over 50,000.

Transportation Improvement Program (TIP): A local approved short range transportation plan that reflects the program of publicly funded transportation improvements for the Metropolitan Planning Organization region.

Urbanized Area (UZA): An area defined by the U.S. Census Bureau with a population of 50,000 or greater and a population density of at least 1,000 people per square mile in a central city and 500 per square mile in the surrounding area.

B. ROLES AND RESPONSIBILITIES

Federal Transit Administration (FTA)

The FTA is the federal oversight agency. With headquarters in Washington, D.C., FTA is responsible for: providing overall policy and program guidance for the New Freedom program; allocating funds annually to the States; developing and implementing financial management procedures; initiating and managing program support activities; and conducting national program review and evaluation.

The FTA Region III Office in Philadelphia is responsible for the day-to-day administration of the program. Regional office activities include: reviewing and approving state grant applications; obligating funds; working with states to implement the annual program; receiving state certifications and revisions to the program of projects; review and approval of State Management Plans; oversight of state management responsibilities; and overall grant management.

West Virginia Division of Public Transit (WVDPT)

WVDOT/DPT has been designated by the Governor as the agency responsible for the administration of U.S. DOT Federal Transit Administration (FTA) programs, including the New Freedom Program, within the State of West Virginia.

The DPT's responsibilities include a fair and equitable distribution of funds, adhering to federal and state program guidelines, notifying eligible applicants about the availability of the program, developing program criteria, soliciting applications, and monitoring and improving coordination of public transportation services at the local and state levels. The DPT will, for non-urbanized and small urban areas, certify eligibility of applicants, review applications, select applications for approval, apply for and receive funding, execute contracts, monitor grants, ensure that audits are performed on all New Freedom grants, and close out projects. The DPT will also provide appropriate technical assistance to all subrecipients.

C. COORDINATION

SAFETEA-LU, the Federal authorizing legislation for highway and transit funding, requires locally developed coordinated public transit human services transportation plans as a condition for funding under three FTA Programs: Elderly Individuals and Individuals with Disabilities (Section 5310), Job Access and Reverse Commute (JARC) (Section 5316), and New Freedom (Section 5317) grant programs. The New Freedom program specifically requires coordination of federally assisted programs and services in order to make the most efficient use of Federal resources.

By identifying both the transportation needs and issues of a particular area and the transportation services available to meet these needs, locally developed coordinated plans can help reduce or eliminate many of the problems and issues previously mentioned, such as duplication of services and underutilization of resources, and actually help extend or expand service to meet unmet transportation needs.

Locally Developed Coordinated Public Transit-Human Services Transportation Plans

All New Freedom projects are selected for funding from a locally developed coordination plan, developed as a result of participation by a wide range of stakeholders, including but not limited to, representatives of public, private, and non-profit and human services transportation providers, potential New Freedom applicants, potential New Freedom customers, advocacy organizations, medical professionals, local businesses, the general public. These local plans, county and/or regional, representing nonurbanized and urbanized areas, have been developed and adopted locally and comprise the West Virginia statewide coordinated plan. The DPT developed a coordination plan template and instructions and provided technical assistance for the conduct of these plans.

Local Coordination Efforts

The Regional Planning and Development Councils and MPO's serves as an advisory and information resource to the applicant for activities including, but not limited to assisting the applicant in assessing and identifying transit needs and resources within their service area; and establishing goals and objectives for coordinated transportation service delivery.

Since this process is in place for the Section 5310 and 5311 Programs, it will also be the clearinghouse for developing the local coordinated public transit-human service transportation plans and to ensure on-going coordination among all FTA programs, including JARC and New Freedom.

Coordination at the State Level

The West Virginia Transportation Coordinating Council is a Governor-appointed state agency working group established to study issues pertaining to the effective and efficient use of transportation resources in the state, as well as to facilitate cooperation and

coordination between other state-administered transportation programs, including WVDOT's transit programs.

The group consists of representatives from each state agency that have responsibility or direct statutory authority for transportation related activities.

The Council meets regularly to discuss transportation and coordination issues. One of its first efforts was to conduct a coordination study to determine the level of coordination already underway in the state; identify the opportunities for, and obstacles to, additional coordination activities in a direct effort to reduce service duplication, identify service gaps, and expand service through coordination; identify best practices, both within West Virginia and across the country which could have statewide application; and make recommendations for those strategies and alternatives for implementing and expanding transportation coordination. One direct result of this study was the development of the West Virginia Transportation Coordination Toolkit issued by the West Virginia Division of Public Transit, which contained a number of coordination tools and resources, including a template for conducting a Coordinated Public Transit-Human Services Transportation Plan.

D. ELIGIBLE SUBRECIPIENTS

Direct Recipients

For purposes of the New Freedom program in the state of West Virginia, there are three subrecipients of New Freedom funds:

- a) Private non-profit organizations
- b) State or local government authority; and
- c) Operators of public transportation services including private operators of public transportation services.

Pass-Through Recipients

An eligible subrecipient may choose to pass all or a portion of its New Freedom funds through to another agency to carry out the purposes of the New Freedom project and its agreement with the State. This arrangement is required for private nonprofit organizations that have obtained a formal resolution of a local governing board to apply for New Freedom funding. In these situations, a written agreement must be executed between both local parties to assure the State and FTA that the recipient will be able to comply with its obligation to satisfy the requirements of the New Freedom grant agreement. Pass thru agreements must be clearly described in the New Freedom application and the State must be notified of any changes to the agreements over the life of the project. A pass through agreement does not relieve the grantee of its responsibilities to carry out the terms and conditions of the grant agreement.

E. LOCAL SHARE AND LOCAL FUNDING REQUIREMENTS

New Freedom funds may be used to finance capital and operating expenses. The Federal share of eligible capital costs may not exceed 80 percent of the net cost of the activity. The Federal share of the eligible operating costs may not exceed 50 percent of the net operating costs of the activity. The local share of eligible capital costs shall be no less than 20 percent of the net cost of the activity, and the local share for eligible operating costs shall be no less than 50 percent of the net operating costs.

All of the local share must be provided from sources other than Federal DOT funds. Some examples of sources of local match which may be used for any or all of the local share include State or local appropriations; other non DOT Federal funds; dedicated tax revenues; private donations; revenue from human service contracts; toll revenue credits; and net income generated from advertising and concessions. When Non-Emergency Medical Transportation (NEMT) funds are used for local match, at least 25 percent of the funds must be credited to the fare box.

Local match may be derived from other Federal funds derived from Federal programs that are eligible to be expended for transportation, other than from the Department of Transportation programs. Examples include Temporary Assistance for Needy Families (TANF), Medicaid, Employment training programs, Rehabilitation Services, and Administration on Aging. To be eligible for local match for FTA funds, the other Federal funds must be used for activities included in the total net project costs of the FTA grant. Expenditure of other Federal funds for transportation outside of the scope of the project cannot be applied as a credit for local match in the FTA grant.

F. PROJECT SELECTION CRITERIA AND METHOD OF DISTRIBUTING FUNDS

The New Freedom application process will be conducted by the DPT for small urban and non-urbanized areas.

Applicants must have demonstrated 1) their participation in a locally developed coordination plan, and 2) that the project was derived from the plan, before the application will be evaluated.

Once the annual Section 5317 allocation has been published in the federal register, 10 percent will be deducted from the total for state administrative expenses. Applications will be solicited and competitively selected from the funds available to each small urban and non-urban area. The Division will announce the availability of the funds through an announcement on the Division's website and other outreach activities.

New Freedom grants or individual projects to be awarded will be capped at \$50,000 unless any funds remain in the small urban and or non-urban allocation after the competitive grant solicitation and funding selection is completed.

The Division may select funding for multiple years of operating assistance but will hold competitive grant solicitations annually or at intervals not to exceed three (3) years.

A. Types of Financial Assistance

New Freedom funds may be used for capital and/or operating projects that support **new** public transportation services beyond those required by the ADA and new public transportation alternatives beyond those required by the ADA.

Eligible New Freedom Activities

New Freedom program funds must be used in projects designed to assist individuals with disabilities with accessing transportation services, including transportation to and from jobs and employment support services. For the purpose of the New Freedom Program, **"new" service is any service or activity that was not operational before August 10, 2005 and did not have an identified funding source as of August 10, 2005, as evidenced by inclusion in the Transportation Improvement Plan (TIP) or the State Transportation Improvement Plan (STIP).** All projects must be derived from a locally developed, coordinated public transit-human services transportation plan. Projects not included in a coordinated plan will not be eligible.

- A. New Public Transportation Services beyond the ADA. The following activities are examples of eligible projects meeting the definition of new public transportation:

1. Enhancing public transportation services beyond minimum requirements of the ADA. Paratransit services can be eligible under New Freedom in several ways as long as the services provided meet the definition of "new."
2. Feeder services. New "feeder" service (transit service that provides access) to commuter rail, commuter bus, intercity rail, and intercity bus stations.
3. Making accessibility improvements to transit and intermodal stations not designated as key stations.
4. Travel training. New training programs for individual users on awareness, knowledge, and skills of public and alternative transportation options available in their communities.
5. See FTA Proposed Circular for the New Freedom Program Guidance and Application Instructions, May 1, 2007 for additional examples of "new" service.

B. New Public Transportation Alternatives beyond the ADA. The following activities are examples and should not be considered an exhaustive list of projects that are eligible as new public transportation alternatives beyond the ADA under the New Freedom Program:

1. Purchasing vehicles to support new accessible taxi, ride sharing, and/or vanpooling programs.
2. Supporting the administration and expenses related to new voucher programs for transportation services offered by human service providers.
3. Supporting new volunteer driver and aide programs.
4. Supporting new mobility management and coordination programs among public transportation providers and other human service agencies providing transportation.
5. See FTA Proposed Circular for the New Freedom Program Guidance and Application Instructions, August 30, 2006 for additional examples of "new" service.

Indirect cost/expenses cannot exceed 10 percent of the grant.

B. Project Eligibility

Project eligibility will be determined as follows:

1. Must be a unit of local government, private nonprofit organization, public transit system, including existing Section 5311 grantees or 5307 designated recipients or grantees
2. The proposed project must have been derived from a locally developed and adopted coordinated plan for the respective small urbanized or nonurbanized area, which is on file with the DPT.

3. The proposed project must support the development and maintenance of transportation services designed to transport individuals with disabilities to and from jobs and activities related to their employment.
4. The applicant must ensure that adequate funds are available to match New Freedom funds and to provide for continuing service.
5. The Federal share of eligible capital costs may not exceed 80 percent of the net capital costs of the project.
6. The Federal share of the eligible operating costs may not exceed 50 percent of the net operating costs of the activity.
7. All of the local share must be provided from sources other than U.S. Department of Transportation funds.
8. Non-cash share such as donations, volunteer services, and in-kind contributions is eligible to be counted toward the local match. The value of any non-cash share shall be documented and supported, represent a cost which would otherwise be eligible under the program, and be included in the net project costs in the project budget. In-Kind may be allowed at the Division of Public Transit's Directors discretion.
9. Applicant must demonstrate a commitment to maintain the project over its life cycle.
10. Applicant must have no known and documented issues with past performance concerning liability, negligence or safety.

Applications/Requests for Funding

New Freedom funds are available to eligible applicants on a state fiscal year (July 1 through June 30) basis. Availability of New Freedom funding will be announced annually. Potential applicants shall be notified of the availability of a grant application package and instructed to submit a completed grant application. For existing Section 5311 grantees, a combined Section 5311 and New Freedom application may be submitted. Technical assistance is available to all applicants, as needed, in the preparation of the applicants. The deadline for submitting applications will be indicated in the application package. Applicants requiring assistance with their applications must make these requests to the DPT before the established deadline. Projects are to begin July 1.

In general, the grant application will include the following items:

1. *Project description and budget:* The applicant must describe existing transportation services, service area, number of passengers served, existing vehicle inventory, type of service provided, capital needs, proposed operating and capital budgets, procurement system, and system operation and performance.
2. *Coordination Plans:* All projects must have been derived from a locally developed Coordinated Public Transit-Human Services Transportation Plan. Applicants will be asked to indicate the name of the agency responsible for developing the plan, the date the plan was adopted, provide a description of the

applicant's participation in the plan, and the priority or recommendation documented in the plan that this project addresses.

3. *Public Involvement:* Public involvement is essential to providing a service that addresses community needs. Efforts to involve the public should be made. The DPT strongly encourages applicants to utilize their Regional Planning and Development Councils and MPO's. Regional Planning and Development Councils and MPO's are expected to encourage private sector participation and to afford an opportunity for input in plan developments. For capital grants public hearings are required.
4. *Transportation Improvement Plans:* Applicants, which are located within metropolitan planning boundaries, must submit their transit projects to the applicable Metropolitan Planning Organization (MPO) for inclusion in the current Transportation Improvement Program (TIP). Guidance is provided in 23 CFR Part 450 and 49 CFR Part 613.
5. *Grant justification:* The applicant must provide evidence of how the services or equipment requested support the development and maintenance of new or expanded transportation services designed to transport individuals with disabilities to and from jobs and job related activities. In addition, an explanation of how this project complements existing services and resources must be provided.
6. *Governing body authorization:* The appropriate legislative body must pass a resolution authorizing the applicant to pursue New Freedom funding.

In addition, applicants (and their third party contractors) must annually certify compliance with the various federal requirements, described in detail later in this plan, including, but not limited to, civil rights, bus testing and Buy America Provisions, Restrictions on Lobbying, Disadvantaged Business Enterprise (DBE), labor protection laws, regulations for charter and exclusive school service provision, and environmental protection. A complete listing of assurances and certifications that will be required is published by the Federal Transit Administration (FTA) in the Federal Register.

DPT staff continually monitors compliance through the application process, including the self-certification process, the auditing process and periodic on-site reviews.

Competitive Selection Criteria

Applicants must have demonstrated a) their participation in a locally developed coordination plan, and b) that the project was derived from the plan, before the application will be evaluated. Applications are then reviewed with established criteria, including compliance with the locally developed coordination plan, demonstrated financial capacity, adherence with program goals, and administrative and managerial

capability. One hundred points are possible; an application must score a minimum of 60 in order to be considered for funding.

Projects will be competitively selected based on and evaluated by criteria that include the following:

- Description of the Project
- Need for Service
- Coordination and Program Delivery
- Program Management and Fiscal Capacity

DPT staff may ask other agencies to review and rank New Freedom applications. Based on this ranking, the DPT will make project selections based on the highest scores.

Distribution of Funds/Project Awards

Funds will be awarded to applications, which achieved a score of 60 or higher, beginning with the highest score. As part of the review and selection process, careful consideration will be given to the New Freedom program goals to ensure that individuals with disabilities are the major focus of the proposed new or expanded services. The Division will announce the project awards through a notice on the Division's website.

G. ANNUAL PROGRAM OF PROJECTS DEVELOPMENT AND APPROVAL PROCESS

Program of Projects (POP)

The DPT develops an annual calendar for accepting New Freedom applications and for developing a Program of Projects. Once the competitive selection process is completed, DPT staff will compile an approved list of applicants, indicating whether they are public bodies, public transit operators, and private non profit organizations. Each planning, capital, and operating request is listed as a separate line item and the funding amounts are identified. The POP also contains a brief description of the projects, total project costs and Federal share for each project, and the amount of funds required for planning and program administration. The total Federal funding level for the program of projects cannot exceed the total amount of New Freedom funds available.

POP projects are organized in two categories: A, projects certified by the State to have met all Federal statutory and administrative requirements for project approval applicable to both the project activities and subrecipient that will carry out those activities; B, projects that the State anticipates approving during the current year, but which have not met all of the Federal statutory or administrative requirements or are proposed to be implemented by a subrecipient that has not yet met all applicable Federal requirements. Once all requirements have been satisfied, the state will request that these projects are moved to Category A. Category A projects will receive FTA's unconditional approval, and upon grant execution, funds can be drawn down. The POP is then presented to the DPT Administrator for approval, and then submitted to FTA for its approval.

Applicant Award Notification and Appeal Process

Concurrent with compiling the Program of Projects, all applicants receive written notification of the selection process. Applicants not receiving approval of their application may appeal the selection decision to the DPT Director. The process for filing an appeal is included as Exhibit 1.

Contract Execution

Upon receiving FTA approval of the statewide application, the DPT will execute a grant contract with each nonurbanized grantee. Contracts will describe the responsibilities of each party and must be signed by the applicant or its designee. The DPT will return a copy of the fully executed contract to the grantee with a notice to proceed.

H. ADMINISTRATION, PLANNING, AND TECHNICAL ASSISTANCE

The DPT will administer the New Freedom program, including developing and distributing applications, conducting the selection of projects, and developing the Annual Program of Projects. The DPT will administer the New Freedom using the 10 percent allowable administration funds for this program.

Administration

The DPT administers the New Freedom Program as part of its overall FTA program administration, which includes the Sections 5310, 5311, and 5316 Programs. These activities include providing technical assistance during the application process (previously described), and continuing through contract execution, service implementation, vehicle purchases, if applicable, monitoring, financial management, audits, and project close-outs.

Planning

The DPT has provided assistance to all Regional and Planning Development Councils for the development of a local coordinated public transit-human services transportation plan.

Technical Assistance

The DPT provides management and technical assistance to small urban and rural public transit providers to help develop knowledgeable transit management staff and improve the effectiveness of transit operations. DPT staff provides a variety of technical assistance in the areas of funding, vehicle and equipment procurement, and vehicle maintenance, and training.

The DPT sponsors seminars, workshops and training sessions on rural transit management and operations and other related topics through the Rural Transit Assistance Program (RTAP), a comprehensive and flexible program of training, technical assistance, research, and support services for rural public and specialized transit agencies. RTAP has both a national component and a state component.

The National RTAP program develops products and services, which are used in the DPT's State RTAP Program. In addition, DPT uses its annual state RTAP allocation to develop products and services for training and technical assistance specific to West Virginia's transit operators. Although RTAP was developed as part of the FTA Section 5311 program specifically for rural transit systems, its goals, for example to promote the safe and effective delivery of public transit in rural areas and make more efficient use of public and private resources, and to support the coordination of public, specialized, and human service transportation services are applicable to all areas, nonurbanized and urbanized, public transit operations and specialized transportation services. As such, the DPT envisions including New Freedom projects in its state RTAP program on a space available basis.

The DPT provides and supports a host of training opportunities, including PASS Training and offers a scholarship program for agencies to help offset the costs to send staff to other workshops and training programs. In addition, the DPT can arrange to provide assistance in other functional areas such as marketing and promotion, accounting and reporting, coordination, and personnel and labor relations. RTAP funding is not used for administrative, operating or capital assistance.

I. TRANSFER OF FUNDS

For non-urbanized areas at the divisions' discretion, all New Freedom funds will be administered as part of a New Freedom Program of Projects and will not be transferred to the Section 5311 Program. For urbanized areas under 200,000 population, the DPT will transfer funds to the competitively selected section 5307 recipient once the project selection has been completed.

J. PRIVATE SECTOR PARTICIPATION

Each January, the Division publishes an Early Planning notification. This notice provides private transportation operators or possible new business entrants an opportunity to present their views concerning the development of local transportation plans and programs. The Division does this to ensure that each applicant complies with this requirement.

Further, it is FTA's policy, "that a fair appraisal of private sector views and capabilities is assured by offering private providers an early opportunity to participate in the development of projects that involve new and/or restructured mass transit services."

The early planning notification, as well as the notice that an agency is applying for Section 5317 funding, is published in newspapers of general circulation in the county to be affected by the proposed project, including newspapers oriented to the minority community. Comments must be accepted for at least fifteen days from the date of publication.

The Division of Public Transit and its sub-grantees practice good faith efforts to promote the participation of the private sector in the planning and provision of mass transit services both as an independent private activity and, whenever feasible, through competitive contractual arrangements.

Public and private agencies and organizations are strongly encouraged to participate during public forums and planning workshops. The coordination of transportation services is best seen as a process in which two or more organizations (who have not worked together previously) interact to jointly accomplish their transportation objectives.

Coordination can be used to improve transportation systems performance by eliminating duplication efforts and improving the efficiency of transportation operations. Coordinating transportation means doing better (Obtaining more results, e.g., additional trips) with existing resources. The private sector's participation during the planning and resource identification phase of coordination is an integral component of the coordination process.

K. CIVIL RIGHTS

Title VI, Nondiscrimination, requires that no person because of race, color, or national origin be excluded from participation in, or denied the benefits of any project funded in whole or in part by FTA, including any assistance required for limited English proficient (LEP) persons. *Equal Employment Opportunity (EEO)* prohibits any recipient of FTA funds from discriminating against any employee or applicant for employment based on race, color, religion, national origin, sex, age or disability. Environmental Justice with regard to Minority Populations and Low-Income Populations requires that environmental justice principles be incorporated into existing programs, policies, and activities. The *Disadvantaged Business Enterprise (DBE) Program* requires that all recipients of FTA funds be responsible for meeting applicable regulations regarding participation by DBEs in U.S. DOT programs set forth at 49 CFR Part 26, or any revision or supplement thereto.

Documentation includes but is not limited to: semi-annual Disadvantaged Business Enterprise utilization reports, Good Faith Effort documentation, the impact of grantee service provision on minority/disabled population and the employment make up of transit system personnel.

L. SECTION 504 AND ADA

Section 504 requires recipients of FTA funds to make special efforts to provide transportation that is accessible to individuals with disabilities. Americans with Disabilities Act (ADA) requires that equivalent services are provided to meet the needs of individual with disabilities. DPT staff monitors grantee compliance with Section 504 and ADA requirements by apprising them of their responsibilities, requiring the appropriate certifications as part of the application process and collecting other documentation of compliance as appropriate as part of site visits.

M. PROGRAM MEASURES

The DPT shall require that all subrecipients submit the following:

- (1) Services provided that impact availability of transportation services for individuals with disabilities as a result of the New Freedom projects implemented in the current reporting year. Examples include geographic coverage, service quality and/ or service times.
- (2) Additions or changes to environmental infrastructure (e.g., transportation facilities, side walks), technology, vehicles that impact availability of transportation services as a result of the New Freedom projects implemented in the current reporting year.
- (3) Actual or estimated number of rides (as measured by one-way trips) provided for individuals with disabilities as a result of the New Freedom projects implemented in the current reporting year.

The DPT shall ensure that the necessary information is reported for all subrecipients' of New Freedom funding in projects selected by the designated recipient in the annual report.

N. PROGRAM MANAGEMENT

The following sections describe the DPT's New Freedom program management as it relates to on-going accountability and oversight of West Virginia's New Freedom projects.

Accounting Systems, Financial Management, and Reporting

The DPT has an established accounting and reporting system that meets or exceeds FTA requirements for financial management. In addition, all subrecipients must assure the DPT that each has fiscal control and accounting procedures that will permit preparation of the required reports for the New Freedom program as well as a level of expenditures adequate to establish that such funds are used consistent with the rules and requirements of the New Freedom program. These systems will also allow for the accurate, current, and complete disclosure of all financially assisted activities, the establishment and maintenance of accounting records which are supported by source documents such as cancelled checks, paid bills, payrolls, etc. and which adequately identify the source and application of funds provided, the effective control and accountability of cash, real and personal property, and other assets; the comparison of actual expenditures with budgeted amounts, allowing for the development of performance or productivity data and unit cost information, where appropriate; the application of OMB cost principles, agency program regulations, and the terms of subrecipient's grant agreement to determine the reasonableness, and allocability of costs; and a procedure for minimizing the time elapsing between the receipt of Federal funds and local disbursement. All of these activities will also be documented and reviewed as part of a project audit and close-out.

The DPT and its New Freedom grantees will also dispense and account for program funds in accordance with applicable OMB circulars and state regulations. The DPT monitors grantee expenditures, checking for eligibility and conducts periodic site visits of its grantees during which time random invoices are traced throughout the local accounting system.

Currently, the DPT requires all grantees receiving planning operating assistance to report financial and operating data on a monthly basis. Failure to provide these reports will result in the DPT withholding future reimbursement requests under the grant agreement. Also, the DPT compiles and publishes an annual report for all transit systems in the state based on information from this reporting system.

Grantees receiving capital assistance are required to keep appropriate property control records on all equipment and real property. Grantees are responsible for submitting these records to the DPT to meet the capital asset reporting requirement. Federal Office of Management and Budget and Federal Transit Administration guidelines are used in meeting this reporting requirement.

DPT Review

All vehicle and major capital purchases will be conducted by the DPT. All bid contracts, invitation for bids, and request for proposals for purchases or leases of \$5,000 or greater must be submitted to the DPT for review. In addition, grantees must make all technical specifications available for review, when the DPT believes such a review is needed to ensure that the purchase or lease specified is consistent with the grant award. Also, grantees must make available all procurement documentation upon request by the DPT.

Satisfactory Continuing Control

New Freedom grantees must maintain satisfactory continuing control over facilities and equipment and ensure that they are used in transit service. DPT staff will monitor these stipulations through compliance reviews. Any change in the use of vehicles or equipment must be approved by the DPT.

New Freedom grantees shall provide management records of all vehicles and equipment including a description which includes, at a minimum effort, serial or identification number, purchase date and price, source of property, title holder, federal participation, physical location, current use and condition, disposition data, and if applicable, disposition value.

A grantee must maintain a listing of a vehicle inventory, peak vehicle requirements and active vehicles. A control system must be developed to safeguard against loss, damage, or theft of vehicles and equipment. Each grantee is required to maintain adequate insurance coverage as required by federal, state and local law. Adequate maintenance procedures and programs must be developed to keep vehicles and equipment in good condition. Preventive maintenance programs are required for all New Freedom funded vehicles.

Property Management

The Automated Vehicle Inventory System (AVIS) establishes a permanent property record for each piece of equipment purchased under a FTA grant. This system assists the Division in complying with FTA property management standards. A manual back-up system is also maintained.

Property records include information such as a description of the property, an equipment identification number, acquisition date, acquisition cost, FTA grant number and federal share of acquisition costs. Many other data fields are also included in the program to aid in the day-to-day management of property.

The system also provides the Division with a management tool to assist in the identification of equipment by either a specific federal grant or by an individual local agency. A series of reports can be generated based on grant requirements or other program management needs.

A control system must be developed to safeguard against loss, damage, or theft of vehicles and equipment. Each grantee is required to maintain adequate insurance coverage as required by federal, state and local law.

Vehicles and Equipment Use

The DPT encourages the maximum use of all FTA-funded vehicles. Vehicles purchased with New Freedom funds will primarily be used for JARC projects, which have been derived from locally developed coordinated plans. However, so long as New Freedom needs continue to be met, vehicles can also be used for other Federal Programs. If the original subrecipient no longer needs the vehicle for the purposes for which it was acquired, the vehicle can be kept in use for the New Freedom program by transferring it to another subrecipient. The transfer will be shown in a DPT active program of projects. Once the vehicle is no longer needed for New Freedom program purposes, the vehicle will be used first in connection with other FTA-sponsored activities, and then for activities sponsored by other Federal agencies.

The Division shall hold the title to all vehicles purchased with Section 5317 assistance. Subrecipients hold the title to real property and facilities purchases/constructed with Section 5311 assistance.

Equipment is defined as tangible, non-expendable, personal property having a useful life of more than one year and a unit price of \$300 or more. Typically, equipment includes such items as major spare parts, computer systems, communication system major maintenance tools, passenger shelters, etc.

Vehicles and equipment shall be used in the program for which it was acquired as long as it is needed. This is true even if new Freedom funding does not continue to fund the program. All grantees are required to submit an "annual certificate of use" for all vehicles and equipment acquired under the New Freedom Program.

The grantee may make vehicles or equipment available for use in other programs or projects currently or previously supported by federal funds. However, this use may not interfere with the work on the program or project for which it was originally acquired. User fees shall be considered in this situation. Federally funded vehicles and equipment may not be used to provide services for a fee to compete unfairly with private companies.

Maintenance

Adequate maintenance procedures and programs must be developed to keep vehicles and equipment in good condition. Written preventive maintenance plans are required for all New Freedom funded vehicles.

Disposition

The DPT has established guidelines for establishing useful life and the disposition of vehicles, equipment, and/or real property when these items are no longer needed for the original project or program for which they were acquired. Disposition of said items must be made in accordance with West Virginia state law. The DPT must be notified of all subsequent disposition actions. Income from dispositions must be retained by the subrecipients for the transit program. DPT staff will track equipment transfers in Program of Project (POP) reports that are submitted to the Federal Transit Administration. Documented evidence that the income is being used for the transit program must be provided to the DPT. The DPT's disposition criteria and guidelines are included as Exhibit 3.

Audits and Close-Outs

Local grantees are responsible for securing organization-wide or grant specific audits. All audits performed on grantees under the New Freedom program shall be in accordance with Office of Management and Budget, Circular A-133. The closeout of New Freedom grants will occur after the DPT has received, reviewed, and accepted the audit report(s) and any final grant reports.

O. OTHER PROVISIONS

The DPT will execute the annual certifications and assurances with the submission of the New Freedom Program of Projects. All New Freedom applicants are required to execute and submit all required certifications and assurances as outlined in the FTA New Freedom Circular. DPT staff will monitor compliance with all of these provisions during the application process and as part of site visits throughout the operation of the project. Further clarification on specific provisions is offered below.

Environmental Protection

New Freedom projects are generally felt to have very limited or no environmental effects, and as such would be categorical exclusions under 23CFR771.117(c), divided into two groups. The first group, which have very limited or no environmental effects at all, are planning and technical studies, preliminary design work, program administration, operating assistance, and transit vehicle purchases. No environmental documentation is required for these projects. The second group involves more construction and greater potential for off-site impacts, such as new construction or expansion of transit terminals, storage and maintenance garages, office facilities, and parking facilities. It is anticipated that all of the DPT's New Freedom projects will fall into group #1 and as such, require no environmental documentation. However, the DPT will screen all projects for compliance with the environmental protection regulations to ensure that all potential projects are compliant.

Exclusive School Transportation

New Freedom applicants are not permitted to provide exclusive school bus service and will indicate this by executing the appropriate agreement as part of their grant contract.

Buy America

New Freedom applicants will comply with 49 USC 5323(j), 49 CFR Part 661, and any other implementing guidance issued by FTA.

Pre-Award and Post Delivery Audits

The DPT will assure the compliance of pre and post delivery audits. New Freedom applicants will execute an assurance signifying their intent to conduct pre-award and post-delivery audits of any vehicles purchased with FTA funds in accordance with the FTA's guidance for Pre-award and Post-delivery Audits of Rolling Stock Purchases should the division permit subrecipients to purchase vehicles without utilizing DPT contracts.

Interim Bus Testing, 49 CFR, Part 665

The DPT will assure that New Freedom applicants must certify their compliance with the

federal regulation before accepting any new bus models purchased or leased with FTA funds.

Drug Free Work Place Requirements

WVDOT/DPT is in compliance with the Drug Free Work Place requirements and annually reconfirms its compliance as required by the Drug Free Workplace Act of 1988.

Debarment and Suspension

All JARC applicants are required to execute the debarment and suspension second tier certification.

Restrictions on Lobbying

All New Freedom applicants are required to execute the restrictions on lobbying certification. DPT staff will monitor conformance with Federal Restrictions on Lobbying through on-site compliance review questions, in addition the DPT will review all applicable procurement documents for the presence of the Lobbying Certification. Lobbying restrictions apply to grants, contracts, and cooperative agreements involving \$100,000 or more (Section 319 of Public Law 101-121).

Charter Restrictions

The amended charter regulations, 49 CFR Part 604 went into effect April 30, 2008. FTA prohibits grantees from using federally funded equipment or facilities if a registered private charter operator expresses interest in providing the service. Grantees are allowed to operate community based charter services excepted under the regulations. Notably, the regulations exempt Section 5317 grantees who are allowed to provide charter service for "program purposes." Subrecipients performing charter service must comply with the FTA charter regulations.

Charter Definition. The regulation defines charter services as:

1. Transportation provided at the request of a third party for the exclusive use of a bus or van for a negotiated price. The following features may characterize charter service:
 - A third party pays a negotiated price;
 - Any fares charged are collected by a third party;
 - The service is not part of the regularly scheduled service or is offered for a limited period of time; or
 - A third party determines the origin and destination of the trip as well as scheduling.
2. Transportation provided to the public for events or functions that occur on an irregular basis or for a limited duration, and

- A premium fare is charged that is greater than the usual or customary fixed route fare, or
- The service is paid in whole or part by a third party.

Charter Exemptions. Exemptions are not considered charter service and require no notification to registered charter providers, record-keeping, quarterly reporting, or other requirements. The exemptions are:

1. Recipients moving transit employees, contractors and government officials for transit purposes, including training;
2. Private charter operators that receive Federal assistance, with the following caveat: private charter operators that “stand in the shoes” of public transit agencies are covered per the applicability of the public agency;
3. Recipients performing emergency preparedness planning and operations;
4. Recipients responding to immediate emergencies;
5. Recipients in non-urbanized areas transporting its employees for training purposes;
6. Recipients of funds from Section 5317 providing transportation for “program purposes.” “Program purpose” is transportation that serves the needs of either human service agencies or targeted populations (elderly, individuals with disabilities, and or low income individuals).

Charter Exceptions and Procedures. The charter regulation established six community based charter service exceptions. The table below lists the exceptions and the administrative requirements associated with each.

Exception	Procedure
<p>Exception 604.6 – Government officials on official government business (GO)</p> <p>(1) Is restricted to its geographic service area</p> <p>(2) Must not generate revenue, except as required by law</p> <p>(3) Is limited to 80 hours annually. May petition for additional charter hours.</p>	<p>Record the following information:</p> <p>P. Government organization’s name, address, phone number, and email address</p> <p>Q. Date and time of service</p> <p>R. Number of government officials and other passengers</p> <p>S. Origin, destination, and trip length (miles and hours)</p> <p>T. The fee collected, if any</p> <p>U. Vehicle number (example, bus 102)</p> <p>Retain the record for three years.</p> <p>Complete and submit to DPT the Charter Service Reporting Form with the Monthly Project Expenditure Report.</p>

Exception	Procedure
<p>Exception 604.7 – Qualified human service organizations (QH)</p> <p>Service to persons:</p> <ol style="list-style-type: none"> (1) With mobility limitations related to advanced age, (2) With disabilities, or (3) With low income. <p>Organization must register if it does not receive funds from programs listed in Appendix A of the charter regulation.</p>	<p>Ensure that the human service agency is qualified, that is, it receives funds from programs listed in Appendix A of the charter regulation or has registered on the FTA charter website at least 60 days before the charter request.</p> <p>Record the following information:</p> <ol style="list-style-type: none"> 1. QHSO's name, address, phone number, and email address 2. Date and time of service 3. Number of passengers 4. Origin, destination, and trip length (miles and hours) 5. The fee collected, if any 6. Vehicle number (example, bus 102) <p>Retain the record for three years.</p> <p>Complete and submit to DPT the Charter Service Reporting Form with the Monthly Project Expenditure Report.</p>
<p>Exception 604.8 – Leasing FTA funded equipment and drivers to a charter service operator (LE) only if the following conditions exist:</p> <ol style="list-style-type: none"> 1. The operator is registered on the FTA charter registration web site 2. The operator owns and operates buses or vans in a charter service business 3. The operator received a request for charter service that exceeds its capacity either of the number of vehicles operated or the number of accessible vehicles 4. The operator has exhausted all of the available vehicles for all registered charter providers in your geographic service area. 	<p>Record the following information:</p> <ol style="list-style-type: none"> 1. Registered charter provider's name, address, telephone number, and email address 2. Number of vehicles leased, types of vehicles leased, and vehicle identification numbers 3. Documentation presented by the registered charter provider that the four conditions are satisfied. <p>Retain the record for three years.</p> <p>Complete and submit to DPT the Charter Service Reporting Form with the Monthly Project Expenditure Report.</p>
<p>Exception 604.9 – When no registered charter provider responds to a notice posted on the FTA charter website (WN):</p> <ol style="list-style-type: none"> 1. Within 72 hours for charter service requested to be provided in less than 30 days, or 2. Within 14 calendar days for charter service requested to be provided in 30 days or more. 	<p>Include the in the e-mail notice sent to the list of registered charter providers:</p> <ol style="list-style-type: none"> 1. Customer name, address, phone number, and e-mail address (if available); 2. Requested date of service; 3. Approximate number of passengers 4. Type of equipment requested, bus(es) or van(s); 5. Trip itinerary and approximate duration; and 6. The intended fare to be charged for the service. <p>If an "undeliverable" notice is received in response to its e-mail notice, fax the notice.</p> <p>If service is provided, record the following information:</p> <ol style="list-style-type: none"> 1. The group's name, address, phone number, and email address 2. Date and time of service 3. Number of passengers 4. Origin, destination, and trip length (miles and hours) 5. Fee collected, if any 6. Vehicle number (example, bus 102) <p>Retain all records (email sent, undeliverable notice, facsimile, record of charter) for three years.</p>

Exception	Procedure
<p>Exception 604.10 – Agreement with registered charter providers If a new charter provider registers in the geographic service area, may continue to provide charter service for 90 days without an agreement with the newly registered charter provider. Any parties to an agreement may cancel at any time after providing a 90-day notice.</p>	<p>Record the following information:</p> <ol style="list-style-type: none"> 1. The group's name, address, phone number, and email address 2. Date and time of service 3. Number of passengers 4. Origin, destination, and trip length (miles and hours) 5. Fee collected, if any 6. Vehicle number (example, bus 102) <p>Retain the record for three years.</p>
<p>Exception 604.11 – Petitions to the Administrator for:</p> <ol style="list-style-type: none"> 1. Events of regional or national significance 2. Hardship (<200,000 population only) 3. Unique and time sensitive events that are in the public interest 	<p>For an event of regional or national significance, the petition shall describe how registered charter providers were consulted and will be utilized, include a certification that the recipient has exhausted all the registered charter providers in its service area, and submit the petition at least 90 days before the first day of the event.</p> <p>For a hardship request, the exception must be for deadhead time that exceeds total trip time from initial pick-up to final drop-off, including wait time and shall describe how the minimum duration would create a hardship on the group requesting the charter.</p> <p>For a unique and time sensitive event, the petition shall describe why the event is unique and time sensitive and would be in the public's interest.</p> <p>Record the following information:</p> <ol style="list-style-type: none"> 1. The group's name, address, phone number, and email address 2. Date and time of service 3. Number of passengers 4. Origin, destination, and trip length (miles and hours) 5. Fee collected, if any 6. Vehicle number (example, bus 102) <p>Retain the record for three years.</p>
<p>Note: Charter service hours include: time spent transporting passengers, time spent waiting for passengers and "deadhead" hours.</p>	

Division Responsibilities. The Division is responsible for monitoring compliance among its subrecipients. The Division addresses compliance with the charter regulation through monthly reporting and biennial site visits. The Division requires its subrecipients to attach a charter reporting form to their Monthly Project Expenditures Report as well as indicate the number of charters conducted during the month. The Division reports to FTA quarterly on subrecipient charter activity.

The Division will investigate any complaints or appeals. The penalty for violations can be ineligibility for further federal funding. It is critical that all transit systems review their practices and make sure they comply. All Section 5317 subrecipients file a Certification of Compliance with the Division of Public Transit as part of their annual grant application.

Miscellaneous Requirements

Section 5333(b). Requires the applicant to comply with applicable labor requirements and protective provisions for employees of surface transportation providers. In addition, the WVDOT Division of Public Transit maintains a list of existing transportation providers and submits to the Department of Labor with each applicant to the FTA.

Commercial Driver's License. All drivers of vehicles designed to transport more than 16 persons (including the driver) must have a commercial driver's license (CDL). Mechanics that drive the vehicles must also have a CDL.

Lease Versus Buy Considerations. Capital funds may be used to lease capital assets from another party in cases where it is determined that leasing would be more cost effective than either purchasing or constructing the asset. Cost effectiveness comparisons must be conducted in accordance with 49 CFR Part 639.

Evaluation of Flood Plain (if applicable, capital transit facilities only). Applicants must conduct analysis of flood hazards if construction is within a flood plain.

Real Estate Acquisition and Relocation (if applicable, capital transit facilities only). Applicant must meet federal requirements for acquisition and relocation of private residents and businesses.

FTA Safety Jurisdiction. Failure to correct any condition FTA believes "creates a serious hazard of death or injury" will result in loss of federal assistance.

P. STATE MANAGEMENT PLAN REVISIONS AND UPDATES

The DPT will complete and submit to FTA revisions to this State Management Plan only when significant changes occur in the Federal New Freedom Program (as in finalization of, or changes to, the New Freedom Program Circular) or when significant changes occur in DPT's program administration. Other changes may be the result of significant public comment towards the DPT's administration of the New Freedom program.

Exhibit 1.
WV/DOT/DPT Appeal Process

If an application is not funded based on committee recommendations, the applicant may appeal the outcome by using the following process:

- *To Initiate the appeal process, the applicant must submit a written appeal to:*

*Director
WV/DOT Division of Public Transit
1900 Kanawha Boulevard East
Building 5, Room 830
Charleston WV 25305-0432*

- *A letter of appeal from the applicant must clearly state the organization name, contact person, address, phone number, project description and grounds for appeal.*
- *A letter of appeal must be postmarked no later than 14 calendar days from the postmarked date of WV/DOT/Division of Public Transit's notice of the applicant's funding status.*
- *The Public Transit Director's Office will review the appeal and provide a written response within ten working days of receipt of the appeal.*

Exhibit 2.

New Freedom Application Instructions and Forms

Exhibit 3.

Disposition Criteria and Guidelines